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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CRAIG S. ETCHEGOYEN

Appeal 2017-005918
Application 13/707,454¹
Technology Center 3600

Before MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

SILVERMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 1–5. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ “The real parties in interest are Uniloc USA, Inc. and the assignee Uniloc Luxembourg S.A.” Appeal Br. 4.

ILLUSTRATIVE CLAIM

1. A computer implemented method for conducting an energy resource dispensing transaction with a customer computing device, the method comprising:

receiving a request for dispensing of an energy resource from the customer computing device, wherein the request includes a customer computing device identifier;

retrieving customer data that is stored prior to creation of the request and that associates the customer computing device identifier with one or more customer financial accounts;

determining that the one or more customer financial accounts that are associated with the customer computing device have funds of at least a cost of a proposed amount of the energy resource;

causing a resource dispenser to dispense the energy resource in a dispensed amount that is no greater than the proposed amount;

effecting transfer of funds from the one or more customer financial accounts to one or more seller financial accounts associated with the resource dispenser, wherein the funds correspond to the dispensed amount of the energy resource.

REJECTIONS

I. Claims 1–5 are rejected under 35 U.S.C. § 101 as directed to patent-ineligible subject matter.

II. Claims 1–5 are rejected under 35 U.S.C. § 103(a) as unpatentable over Call et al. (US 2005/0192832 A1, pub. Sept. 1, 2005) (“Call”) and Silverman (US 2012/0271686 A1, pub. Oct. 25, 2012).

FINDINGS OF FACT

The findings of fact relied upon, which are supported by a preponderance of the evidence, appear in the following Analysis.

ANALYSIS

Rejection Under 35 U.S.C. § 101

Applying the first analytical step of *Alice Corp. Pty. Ltd. v. CLS Bank International*, 134 S. Ct. 2347, 2355 (2014), the Examiner maintains that claims 1–5 are directed to an abstract idea, characterized as “conducting an energy resource dispensing transaction.” Answer 2; *see also* Final Action 3–5, 8–9. Under the second step of the *Alice* analysis, the Examiner determines that the claims recite generic computer functionality that does not amount to an inventive concept that would meaningfully limit the use of the abstract idea, so as to render the claims patent-eligible. Answer 2, 4–7; *see also* Final Action 4–5.

The Appellant (Appeal Br. 9–10) argues that the purported abstract idea fails to embrace the recited features of the independent or dependent claims. This argument is not persuasive of error in the rejection, at least because the Appellant does not explain how any such non-analyzed claim features might lead to a determination that any claim is not directed to an abstract idea.

The Appellant also criticizes the Examiner’s characterization of the abstract idea to which the claims are directed, especially the Examiner’s approach of looking to similar claimed subject matter that courts have determined to be abstract ideas. *See* Appeal Br. 10–13. This argument is unpersuasive, as the Supreme Court and the Court of Appeals for the Federal Circuit have endorsed such an approach. *See Alice*, 134 S. Ct. at 2356 (“It follows from our prior cases, and *Bilski* [*v. Kappos*, 561 U.S. 593 (2010)] in particular, that the claims at issue here are directed to an abstract idea.”); *Amdocs (Israel) Limited v. Openet Telecom, Ltd.*, 841 F.3d 1288, 1294 (Fed.

Cir. 2016) (“[T]he decisional mechanism courts now apply [for determining whether a claim is directed to an abstract idea] is to examine earlier cases in which a similar or parallel descriptive nature can be seen — what prior cases were about, and which way they were decided.”).

In addition, the Appellant contends that the claims are patent-eligible, regardless of whether they are directed to an abstract idea, because they recite “significantly more” than the purported abstract idea and do not preempt all implementations thereof. Appeal Br. 13–17. Yet, the Appellants do not identify any claimed features that would constitute “significantly more” than the abstract idea, in accord with *Alice*. Further, as the Examiner points out (Answer 7–8) preemption is not a separate test, but is inherently addressed within the *Alice* framework. See *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). “While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Id.*

The Appellants arguments, therefore, are not persuasive of error in the rejection. The rejection of claims 1–5 under 35 U.S.C. § 101 is sustained.

Rejection Under 35 U.S.C. § 103(a)

The Appellant advances several arguments alleging error in the obviousness rejection of various claims on appeal. See Appeal Br. 18–24. In view of the evaluation of these arguments, provided below, we sustain the rejection of claims 1, 2, and 5, and do not sustain the rejection of claims 3 and 4, under 35 U.S.C. § 103(a).

1. *“retrieving customer data that is stored prior to creation of the request and that associates the customer computing device identifier with one or more customer financial accounts”*

The Appellant argues that independent claim 1 was rejected erroneously, because the cited references fail to teach or suggest the recited “associat[ion]” between the “customer computing device identifier” and the “one or more customer financial accounts.” Appeal Br. 18–19. The Appellant contends that, although Call teaches a kiosk (corresponding to the claimed “customer computing device”) and account information (corresponding to the claimed “customer data that is stored prior to creation of the request”), Call shows no “associat[ion]” between the accounts and an “identifier” of the kiosk. *Id.* at 18.

Yet, the Examiner points out that Call teaches such an “associat[ion],” in its description of sending retrieved account information to computer systems, such as the kiosk. *See* Answer 9 (citing Call ¶¶ 42, 46,² 62, Fig. 1 (elements 101, 105, 107–109)).

The Appellant’s argument is unpersuasive. Call teaches the identified limitation, because the claimed “associat[ion]” between the “customer data” and with an “identifier” of the kiosk is achieved in order to send the retrieved information to the kiosk or to other computers. *See* Call ¶ 46.

The Appellant also relies upon this argument as to dependent claims 2–4 and independent claim 5. Appeal Br. 19. Accordingly, the Appellant’s reasons for error, relating to the claimed features addressed above regarding claim 1, are also not persuasive of error in the rejection of claims 2–5.

² The Answer (page 9) mistakenly identifies the source of text, quoted from Call ¶ 46, as Call ¶ 47.

2. “*digital fingerprint*”

The Appellant argues that claim 2 was rejected erroneously because the cited references do not teach or suggest that “the identifier of the customer computing device is a digital fingerprint of the customer computing device.” Appeal Br. 19–21. The Appellant contends that the rejection relies upon Silverman ¶ 251 for the recited feature and that this portion of the reference teaches biometric authentication (concerning the use of biological attributes for identification) — as opposed to information in “digital” form, per the claimed “digital fingerprint.” *Id.* at. 20. According to the Appellant, “[c]omputing devices don’t have biometric fingerprints because computing devices don’t have biological fingers.” *Id.* Further, the Appellant questions the propriety of using Silverman’s biometric identifier with the kiosk taught in Call, because the kiosk would be available for use by the general public, rather than any specific user. *Id.* at 21.

In response, the Examiner finds that Silverman teaches non-biometric identifiers of computing devices, for example referring to “device identification with the help of a unique machine id.” Answer 10 (quoting Silverman ¶ 258). In addition, the Answer refers to a statement in the Specification that digital fingerprints are described in various prior art references. *Id.* at 9–10 (quoting Spec. ¶ 32).

The Appellant’s argument regarding claim 2 is unpersuasive of error, because the rejection does not rely exclusively upon Silverman’s teaching of biometric features of living things, for identification. Rather, the disclosure of a “unique machine id” (Silverman ¶ 258) teaches or suggests the claimed “digital fingerprint” for identifying a device, as claimed.

3. *“the proposed amount is a maximum resource amount corresponding to a maximum amount of available funds in the customer financial accounts upon a condition in which the maximum amount is determined to be less than a requested amount”*

The Appellant argues that claim 3 was rejected erroneously because Call ¶ 49, relied upon in the rejection, teaches that dispensing fuel requires a sufficient balance in a fuel purchasing account, but does not address the circumstance of claim 3 wherein a “requested amount” exceeds a “maximum amount.” Appeal Br. 22. The Appellant contends that, in such a situation, the “proposed amount” will be the “maximum resource amount” and will be dispensed, per the recitations of claim 3. *Id.*

In response, the Answer refers to various portions of Call. Answer 10 (citing Call ¶¶ 42, 48, 49). Further, the Answer states that claim 3 does not recite “what happens when the fuel purchasing account does not have a sufficient balance.” *Id.* at 10–11.

We disagree with the Examiner because the interplay of the features recited in independent claim 1 and dependent claim 3 achieves what the Appellant describes. Namely, where the “maximum amount is determined to be less than a requested amount,” the “proposed amount is a maximum resource amount” (per claim 3), such that claim 1’s “dispensed amount” (which is “no greater than the proposed amount”) will therefore not exceed the “maximum amount.” Therefore, the Examiner’s position on claim interpretation — i.e., that claim 3 does not address the situation of an insufficient balance — is mistaken. Further, the portions of Call cited by the Examiner (*see* Answer 10 (citing Call ¶¶ 42, 48, 49)) — although teaching confirmation that the fuel purchasing account has a sufficient account

balance to purchase fuel (*see* Call ¶ 48) — do not teach capping the extent of a fuel purchase based upon the account balance. Accordingly, the Appellant’s argument is persuasive of error, such that the rejection of claim 3 is not sustained.

4. *“authenticating the transaction on condition that the customer computing device establish a communication link through a local area network with a terminal control computer of the resource dispenser using a communication protocol that also requires transmission and reception of near-filed audio signals between the customer computing device and the terminal control computer to complete authentication”*

The Appellant (Appeal Br. 23–24) argues that claim 4 was rejected erroneously because Call ¶ 38 and Fig. 1 (cited in the Final Office Action, page 14) teach the use of various types of network configurations, but do not teach or suggest claim 4’s “authenticating the transaction on condition that” a particular type of communication link is employed.

The Appellant’s argument is persuasive of error in the rejection because the cited portions of (Call ¶ 38 and Fig. 1) do not refer to authentication being achieved by using a particular type of communication technique. Accordingly, the rejection of claim 3 is not sustained.

DECISION

We AFFIRM the Examiner’s decision rejecting claims 1–5 under 35 U.S.C. § 101.

We AFFIRM the Examiner’s decision rejecting claims 1, 2, and 5 under 35 U.S.C. § 103(a).

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We REVERSE the Examiner's decision rejecting claims 3 and 4 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED